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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **JACOB CHARLES YARBROUGH**
13 **31167 Rd 132**
Visalia, CA 93292
14 **Registered Nurse License No. 594460**

15 Respondent.

Case No. **2010-272**

A C C U S A T I O N

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about February 6, 2002, the Board of Registered Nursing issued Registered
23 Nurse License Number 594460 to Jacob Charles Yarbrough (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on February 28, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

....

7. Section 2762 of the Code states:

...

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

1 (c) Be convicted of a criminal offense involving the prescription, consumption,
2 or self-administration of any of the substances described in subdivisions (a) and (b) of
3 this section, or the possession of, or falsification of a record pertaining to, the
4 substances described in subdivision (a) of this section, in which event the record of
5 the conviction is conclusive evidence thereof.

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9 8. Section 490 of the Code states:

10 (a) In addition to any other action that a board is permitted to take against a
11 licensee, a board may suspend or revoke a license on the ground that the licensee has
12 been convicted of a crime, if the crime is substantially related to the qualifications,
13 functions, or duties of the business or profession for which the license was
14 issued.

15 9. Section 492 of the Code states:

16 Notwithstanding any other provision of law, successful completion of any
17 diversion program under the Penal Code, or successful completion of an alcohol and
18 drug problem assessment program under Article 5 (commencing with Section
19 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
20 agency established under Division 2 (commencing with Section 500) of this code, or
21 any initiative act referred to in that division, from taking disciplinary action against a
22 licensee or from denying a license for professional misconduct, notwithstanding that
23 evidence of that misconduct may be recorded in a record pertaining to an arrest.

24 This section shall not be construed to apply to any drug diversion program
25 operated by any agency established under Division 2 (commencing with Section 500)
26 of this code, or any initiative act referred to in that division.

27 10. Section 493 of the Code states:

28 Notwithstanding any other provision of law, in a proceeding conducted by a
board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person
who holds a license, upon the ground that the applicant or the licensee has been
convicted of a crime substantially related to the qualifications, functions, and duties
of the licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the
qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a

manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445, states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(September 4, 2008 Criminal Conviction for Driving
Under the Influence of Alcohol on January 14, 2008)

14. Respondent is subject to disciplinary action under sections 490, 2761, subdivision (f), and 2762(c) of the Code in that he was convicted of a crime involving alcohol that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

1 a. On or about January 14, 2008, bystanders observed respondent drive into a
2 parking lot with sparks coming from the right front rim of his vehicle due to a missing tire.
3 Several people approached respondent and told him to stop driving. Nevertheless, respondent
4 drove out of the parking lot and stopped at a stop sign where he was approached by several
5 bystanders asking him to return to the parking lot. Respondent backed into the parking lot and
6 stayed there until police arrived. Police officers contacted respondent and smelled a strong odor
7 of alcohol coming from his breath and person. They administered field sobriety tests which
8 respondent failed. He was arrested for driving under the influence of alcohol.

9 b. On or about September 4, 2008, in a criminal proceeding entitled *People of the*
10 *State of California v. Jacob Yarbrough*, in Riverside Superior Court, case number RIF141185,
11 respondent pleaded guilty to violating Vehicle Code section 23152(a), driving under the influence
12 of alcohol, as a misdemeanor. His blood alcohol level was 0.15 percent.

13 c. Respondent was sentenced to summary probation for three years. He was also
14 committed to custody for fifteen days, ordered to pay fines and penalties, and to complete the
15 First Offender Drinking Driver Program.

16 SECOND CAUSE FOR DISCIPLINE

17 (Use of Alcohol in a Manner Dangerous to Self or Others)

18 15. Respondent is subject to disciplinary action under section 2762, subdivision (b) of
19 the Code in that on or about January 14, 2008, respondent used alcohol to an extent as to be
20 dangerous to himself or others, as set forth above in paragraph 14.

21 PRAYER

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Registered Nursing issue a decision:

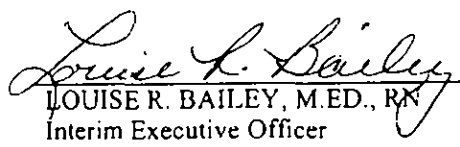
24 1. Revoking or suspending Registered Nurse Number 594460, issued to Jacob Charles
25 Yarbrough.

26 2. Ordering Jacob Charles Yarbrough to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/24/09



LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2009804363